

PSJ17 Exh 104

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
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6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
12 :
13 :

14 - HIGHLY CONFIDENTIAL -
15

16 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
17
18 - - -
19

20 January 4, 2019
21 - - -
22

23 Videotaped deposition of
24 MATTHEW DAY, taken pursuant to notice,
was held at the offices of Golkow
Litigation Services, 1650 Market Street,
Philadelphia, Pennsylvania, beginning at
9:35 a.m., on the above date, before
Michelle L. Gray, a Registered
Professional Reporter, Certified
Shorthand Reporter, Certified Realtime
Reporter, and Notary Public.

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1 THE VIDEOGRAPHER: Going off
2 the record. The time is 1:08.

3 - - -

4 (Lunch break.)

5 - - -

6 THE VIDEOGRAPHER: We are
7 going back on record. Beginning
8 Media File Number 4. The time is
9 1:41.

10 BY MR. MADDEN:

11 Q. Mr. Day, we're back after a
12 lunch break. And I want to go back to a
13 subject that we started talking about
14 this morning, which is the Pain Matters
15 unbranded marketing that we talked about
16 this morning.

17 A. Yes.

18 Q. It's a campaign, correct?

19 A. Yes.

20 Q. And your role was as
21 director of that campaign in the
22 marketing department?

23 A. Yes.

24 Q. All right.

1 (Document marked for
2 identification as Exhibit
3 Teva-Day-23.)

4 BY MR. MADDEN:

5 Q. I'll hand you Exhibit 23.

6 We have a cover e-mail dated
7 11/12/2014, with an attachment of Teva
8 Pain Matters routes. And that's
9 forwarded to you from Samantha Schwarz,
10 November 12, 2014.

11 Do you see that?

12 A. Yes.

13 Q. Ms. Schwarz was?

14 A. GolinHarris was our PR
15 agency.

16 Q. I see. And the people cc'd
17 are those all GolinHarris people?

18 A. Yes, they are.

19 Q. And is that the company that
20 you used to assist you in this unbranded
21 marketing campaign called Pain Matters?

22 A. Yes.

23 Q. If we go to the second page,
24 which is a Bates number ending 565. You

1 see a slide at the bottom of that page
2 which has a quote that says, "Teva
3 understands the risk of opioid abuse as a
4 societal challenge and one many
5 healthcare professionals face in treating
6 people living with chronic pain."

7 Do you see that?

8 A. Yes.

9 Q. I can't tell who that quote
10 is attributed to. Do you know?

11 A. I believe it's Dr. Michael
12 Hayden who was our chief, excuse me,
13 medical officer at the time.

14 Q. Okay. Dr. Hayden at the
15 time was inhouse with Teva?

16 A. Yes.

17 Q. Okay. And what do you
18 understand this second page to be, is
19 this part of the website?

20 A. It is, yes.

21 Q. And it was forwarded to you
22 for approval then?

23 A. Yes, it -- yes. Yes, we
24 would update the website and this was

1 sent to me. Now I wouldn't approve this
2 solely. This would be in a draft version
3 and it would go back into that PARC
4 committee that I talked about earlier
5 that would review the content.

6 Q. What is the societal
7 challenge that's being referenced here,
8 opioid abuse?

9 A. I don't -- I don't know. I
10 didn't speak to Dr. Hayden directly.

11 Q. At the time you received
12 this, you were the director for Pain
13 Matters marketing, right?

14 A. I was, yes.

15 Q. And this was part of that
16 marketing program, correct?

17 A. Correct.

18 Q. Okay. And you have included
19 a quote from Dr. Hayden that says, "Teva
20 understands the risk of opioid abuse as a
21 societal challenge."

22 A. Yeah. I mean, I think they
23 can be multifaceted, right. Abuse,
24 misuse, diversion, I think he's referring

1 to all of those as societal challenges
2 that were going on and that still exist
3 today.

4 Q. Okay. This campaign then
5 was a public relations campaign for Teva?

6 MR. ANDRISANI: Objection.

7 THE WITNESS: It was -- no,
8 it was managed and created by a
9 public relations firm but it
10 wasn't a PR campaign as much as it
11 was really, in its truest sense, a
12 campaign of information and
13 education around pain management,
14 appropriate use of opioids, other
15 therapies, resources.

16 There was a lot of
17 information within the pain
18 community and there was no one
19 place to get all the resources
20 that you needed. So it wasn't
21 necessarily a PR campaign. It was
22 run by the PR company.

23 BY MR. MADDEN:

24 Q. So typically, when a

1 campaign such as this is run, it is
2 either for an existing opioid or pain
3 product, or an anticipated opioid or pain
4 product. Was this campaign run in
5 connection with either of those?

6 A. This campaign was run more
7 as a franchise campaign to speak to
8 Teva's commitment within pain management,
9 not just specific to opioids, Fentora or
10 Amrix or things in development. But this
11 was a therapeutic focus of the
12 organization, was pain care. So it
13 was -- it was a larger franchise.

14 Q. What other pain products
15 were within that pain franchise at the
16 time this campaign was run?

17 A. So this was a time, as we
18 spoke about earlier, with Fentora and
19 Amrix, and then the -- also the pipeline
20 which was developing the abuse-deterrent
21 opioids. And the company was actually
22 looking into other areas of pain
23 management as well, like devices. As I
24 mentioned, this was a therapeutic focus

1 for Teva.

2 Q. At the time Pain Matters was
3 run, was Fentora being detailed to
4 doctors?

5 A. From what I can recall,
6 there may have been a short period of
7 time that it was. And then I think, if I
8 recall, it was about four to six months,
9 and then it ceased promotion, and this
10 campaign continued.

11 Q. All right. At the time Pain
12 Matters campaign was run, was Amrix being
13 promoted to doctors?

14 A. Yes.

15 Q. At the time this campaign
16 was run, was the abuse-deterrent formula
17 Vantrela being detailed to doctors?

18 A. No, it wasn't.

19 (Document marked for
20 identification as Exhibit
21 Teva-Day-25.)

22 BY MR. MADDEN:

23 Q. Mr. Day, I'll hand you
24 Exhibit 25.

1 A. Mm-hmm.

2 Q. We spoke this morning about
3 media portion for the Pain Matters
4 campaign.

5 A. Mm-hmm.

6 Q. And this indicates that
7 there was a screening on the Discovery
8 Channel. Is that true?

9 A. Pain Matters originally was
10 a documentary that was created by the
11 Discovery Channel that chronicled the
12 lives of four patients that were
13 suffering from painful conditions but
14 then evolved into a campaign. So the
15 movie clip that you see here, like Derek
16 McGuinness was a Iraqi war veteran van,
17 who was highlighted in the film in this
18 program. That's in the brochure.

19 Q. Okay. So at the bottom we
20 see, "Supporting partners of Pain
21 Matters." Teva is listed as one of the
22 supporting partners, correct?

23 A. Mm-hmm.

24 Q. Is that true?

1 A. Yes.

2 Q. Did Teva help fund Pain
3 Matters, either the documentary or the
4 website?

5 A. This is referring to the
6 documentary, which we did help fund
7 through the Discovery Channel.

8 Q. Do you recall what the
9 amount of funding was?

10 A. I do not.

11 Q. The speakers are listed
12 here, correct? Are any of those inhouse
13 Teva people?

14 A. No.

15 Q. All right. And then the
16 description for the documentary says,
17 "Exploring perspectives around unmet
18 needs in chronic pain care and discussing
19 the future of pain management."

20 Do you see that?

21 A. Yes.

22 Q. At this time what chronic
23 pain medications were being promoted by
24 Teva?

1 A. We weren't promoting any
2 chronic pain.

3 Q. So the marketing campaign
4 centered around chronic pain, even though
5 the company wasn't marketing any products
6 for chronic pain?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: Not just
9 chronic pain. There were other
10 hallmarks of the program. This
11 was just one particular program.

12 BY MR. MADDEN:

13 Q. But you would concede that
14 this description from the documentary
15 from the Discovery Channel references
16 unmet needs in chronic pain care,
17 correct?

18 A. Yes.

19 Q. I'm going backwards on you
20 here.

21 (Document marked for
22 identification as Exhibit
23 Teva-Day-24.)

24 BY MR. MADDEN:

1 Q. We're going to mark this one
2 Exhibit 24.

3 A. Okay. Keep this one?

4 Q. Keep it.

5 A. Okay.

6 Q. I'll hand you Exhibit 24.

7 Should be the second one. All right.

8 So you get this incremental
9 performance -- strike that.

10 Exhibit 24 is an incremental
11 performance detail for the fourth quarter
12 of 2015 with regard to Pain Matters,
13 correct?

14 A. Correct.

15 Q. Is this a report that you
16 would have received as the director of
17 the Pain Matters campaign?

18 A. Yes.

19 Q. From whom would you have
20 received it?

21 A. This would come from the PR
22 agency GolinHarris.

23 Q. All right. If we go to Page
24 2 of Exhibit 24, in this report, do you

1 see that there is a bullet point that
2 says, "Total 2015 budget \$998,750"?

3 A. Yes.

4 Q. Does that indicate to you
5 that Teva spent almost a million dollars
6 in 2015 on the Pain Matters campaign?

7 A. Yes, although I'm not sure
8 that is exactly what was spent that year.
9 I think it was less. But yes, that
10 was -- that was the approved budget.

11 Q. All right. And did you
12 oversee that budget?

13 A. Yes.

14 Q. And were you in charge of
15 approving the spend on that budget?

16 A. Yes. I would make the
17 recommendations, and then my senior line
18 management would approve it.

19 Q. If we go to page -- the next
20 page. "Pain Matters website, media spend
21 and traffic."

22 Do you see that?

23 A. Yes.

24 Q. And do we see a graph that

1 shows the media spend and then the
2 website traffic associated therewith?

3 A. Yes.

4 Q. So was a goal of the Pain
5 Matters campaign to drive viewers to the
6 Pain Matters website?

7 A. Yes.

8 Q. And what would be the
9 purpose of that if the company wasn't
10 marketing any pain products at the time?

11 MR. ANDRISANI: Objection.

12 THE WITNESS: The purpose of
13 the Pain Matters campaign was to
14 provide information and resources
15 in one place for patients and
16 healthcare professionals about
17 management of pain and provide
18 those resources in one area. And
19 it was a larger, as I mentioned
20 earlier, kind of franchise
21 umbrella, where, you know, we have
22 a therapeutic focus in pain. Not
23 just the products, but the
24 condition itself.

1 BY MR. MADDEN:

2 Q. Okay. So you had an
3 understanding that with this, at least
4 from the document, million dollars spend
5 in 2015, that doctors and patients would
6 go to the website if they were impacted
7 by that media spend to look at the
8 website?

9 A. Mm-hmm.

10 Q. Correct?

11 A. Yes.

12 Q. When is the last time that
13 you looked at the Pain Matters website?

14 A. I cannot recall. Maybe
15 three months ago.

16 Q. Is it still up?

17 A. I believe, yes.

18 Q. Is -- I know you recently
19 left Teva within the last couple weeks,
20 but as of the time that you left Teva,
21 was Teva still contributing to the Pain
22 Matters campaign?

23 A. No.

24 Q. When did that stop?

1 A. Approximately a year ago.

2 Q. Okay. Do you know why it
3 stopped?

4 A. The short answer is budget
5 cuts. Teva's going to a significant
6 restructuring and as a part of that lost
7 a lot of funding for various projects.

8 (Document marked for
9 identification as Exhibit
10 Teva-Day-26.)

11 BY MR. MADDEN:

12 Q. Let me hand you Exhibit 26.
13 Do you recognize Exhibit 26 as printed
14 excerpts from web pages of the Pain
15 Matters website?

16 A. Yes.

17 Q. What role, if any, did you
18 have in reviewing and/or approving items
19 that went on the Pain Matters website?

20 A. I would work myself. I
21 would work with the PR agency, Golin. We
22 would develop the drafts of the various
23 different pages of the website that you
24 see here. And then it would be submitted

1 into PARC, the promotional review
2 committee, to review the content and
3 approve it.

4 Q. The promotional review
5 committee, was that a committee within
6 Teva?

7 A. Yes.

8 Q. Were there any other
9 manufacturers or distributors of opioids
10 who contributed to the Pain Matters
11 website?

12 A. No.

13 Q. So it was really a Teva
14 website, correct?

15 A. Yes.

16 Q. Because it's printed from
17 the web, page numbers are difficult. So
18 I've provided tabs for you. Okay?

19 A. Okay. Great.

20 Q. So the third page in is
21 tabbed. We have a page that says, "Pain
22 perspective, hear from the community."

23 Do you see that page?

24 A. Yes.